

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**CRIMINAL PETITION No.6755 of 2014****ORDER:**

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C") seeking to quash the Order dated 04.06.2014 passed in CrI.M.P.No.158 of 2014 in C.C.No.46 of 2013, on the file of the Court of Special Judge for the trial of ACB Cases, Rayalaseema Region at Kurnool, filed under Section 311 Cr.P.C to reopen the case and recall L.W.13 (DSP, ACB, Tirupati Range, Tirupati) and L.W.14(Inspector of Police, ACB, Tirupati Range, Tirupati).

2. Heard Sri S.M.Subhani, learned Special Public Prosecutor for ACB representing the petitioner/State and Sri C.Sharan Reddy, learned counsel for the respondent/accused officer.

3. The brief facts of this petition are that the respondent/accused officer is being prosecuted for the offence punishable under Sections 7 and 13(2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") before the Special Judge for trial of ACB Cases in Rayalaseema Region at Kurnool. Around the time, L.W.13 - Trap Laying Officer and L.W.14-Inspector of Police, who assisted L.W.13 in the trap proceedings, who are the crucial witnesses

could not be produced before the Court of law on the ground that they were engaged in election bandobast duties for Municipal, ZPTC/MPTC and General Elections, 2014 and their evidence stood closed. On that, the prosecution moved an application under Section 311 Cr.P.C seeking the trial Court to reopen the matter and recall the above witnesses (L.W.13 and L.W.14) for their examination, as their evidence is very much essential for the case of this nature. But, the learned Trial Court without appreciating the matter in a proper perspective went wrong and came to a conclusion that there are no justifiable grounds to recall those witnesses for examination and the application filed thus, was dismissed. Aggrieved by the said Order of Dismissal, the present quash petition is filed.

4. Learned Special Public Prosecutor for ACB submits that the Order passed by the learned Special Judge for ACB Cases, Kurnool contains no cogent reasons and is not in accordance with law and the same warrants interference of this Court. Further, he would submit that on the date of their examination, L.Ws.13 and 14 could not attend the Court, as they were attending bandobast duties for the Elections in Municipalities ZPTC/MPTC. In spite of sending radio messages by the witnesses, seeking to adjourn the matter, the learned trial Judge

was not convinced and thereby, closed their evidence. He would further submit that an application was filed under Section 311 Cr.P.C seeking the trial Court to reopen the matter and recall those witnesses. The learned trial Judge came to a conclusion that there were no justifiable grounds to recall those witnesses for examination and the said application was dismissed by the trial Court and non-affording of opportunity to the prosecution to produce the evidence of those witnesses, therefore, is unjustifiable. Further, he would submit that the object underlying Section 311 Cr.P.C was to prevent failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of witnesses and in the present case, L.Ws.13 and 14, who are DSP/Trap Laying Officer and Inspector of Police, who assisted L.W.13 are very much crucial witnesses, and without examining them, disposing of the case is not at all a fair trial. Further argued that the object of Section 311 of Cr.P.C simultaneously imposes a duty on the Court to determine the truth and to render a just decision. Therefore, the learned Special Public Prosecutor submits that the Order under challenge is liable to be quashed.

5. Learned counsel for the respondent/accused officer would submit that, in fact, the prosecution witnesses (L.Ws.13 and 14) were not present on several dates though the trial Court accommodated them to give their evidence, and they have not availed the opportunity for which, their evidence was closed by the trial Court. He would further submit that time and again, there are directions of the Hon'ble Apex Court for disposal of the cases time bound, and hence, the trial Court did not commit any error in dismissing the application. Therefore, the present Criminal Petition is liable to be dismissed.

6. In view of the above rival submissions, the question that arises for consideration by this Court is,

Whether the impugned Order dated 04.06.2014 passed by the Special Judge for ACB Cases, at Kurnool in Crl.M.P.No.158 of 2014 in C.C.No.46 of 2013 is sustainable in law or on facts?

POINT:

7. This Court has considered the submissions made by the learned counsels on both sides and perused the material on record.

8. On 06.12.2009 at 10.30 a.m., L.W.1 (*de facto* complainant) came to the ACB Office and lodged a report stating that the respondent/accused officer (Village Revenue Officer) demanded

him to pay Rs.2,500/- as a bribe for recommending his application for making entries in pattadar passbook by obtaining signatures of the Tahsildar. Though the *de facto* complainant pleaded mercy, due to his financial position, the accused officer did not respond. Based on the said report, L.W.13/DSP registered a case in Cr.No.15/RCT-TCT/09 on 07.12.2009 under Section 7 of the Act of ACB Tirupati Range. L.W.13 conducted pre and post-trap proceedings in the presence of mediators, seized the bribe amount under the cover of the mediators report, arrested the accused officer and sent him for judicial custody. L.W.14/Inspector examined the rest of the witnesses, L.Ws.4 to 10 and filed a charge sheet under Sections 7, 13(2) read with 13(1)(d) of the Act.

9. The case of the prosecution was supposed to rest on the evidence of 15 witnesses. Subsequently, the trial was commenced and eight witnesses were examined as P.Ws.1 to 8. Two crucial witnesses i.e., L.Ws.13 and 14, who are the Trap Laying Officer could not be produced before the trial Court as they were engaged in bandobast duties of elections. If they are not examined, the entire exercise of the Investigation Agency would turn futile. On perusal of the Order impugned, nowhere it is indicated that there is any laxity or negligence on the part of

the ACB officials during the trial. No doubt, expeditious disposal of cases is a mandate of law, and the Courts are required to render speedy justice. However, that does not mean that the cases have to be disposed of without giving a fair and just opportunity to the Investigating Officers, though their evidence is very much required for disposing of the cases. An opportunity ought to have been offered by the trial Court to examine those witnesses of this case of nature under the Act.

10. The Hon'ble Apex Court had an occasion to deal with the scope and ambit of Section 311 Cr.P.C in **P.Sanjeeva Rao Vs. State of Andhra Pradesh**¹ wherein, at Para No.19, it was held as follows:

“19. The nature and extent of the power vested in the courts under Section 311 CrPC to recall witnesses was examined by this Court in Hanuman Ram v. State of Rajasthan [(2008) 15 SCC 652 : (2009) 3 SCC (Cri) 1149]. This Court held that the object underlying Section 311 was to prevent failure of justice on account of a mistake of either party to bring on record valuable evidence or leaving an ambiguity in the statements of the witnesses. This Court observed: (SCC p. 654, para 7)

“7. ... ‘26. ... This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such

¹ (2012) 7 SCC 56

of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

11. A plain reading of the above said decision discloses that the Criminal Court has ample power to summon the official witnesses whenever the petition is filed by the prosecution agency to recall any such person even if the evidence is closed by the Court. The jurisdiction of the Court must obviously be dictated by the exigency of the situation and fair play and good

sense appear to be the only safe guides and that only the requirements of justice command to examine the witnesses, which would depend on the facts and circumstances of each case. The Court should discharge its obligation to find out where, in fact, the truth lies. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the Courts of Justice.

12. The Hon'ble Supreme Court of India in **Natasha Singh Vs. Central Bureau of Investigation**² at Para No.15, held as follows:

15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under [Section 311](#) CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party.....”

13. As seen from the above decision, it is clear from the expression of the Hon'ble Supreme Court that while dealing with an application under Section 311 Cr.P.C, the Court is required to exercise its discretion judiciously for a just decision for the

² (2013) 5 SCC 741

discovery of relevant facts. In the instant case, L.W.13 is the Trap Laying Officer, who recovered the bribe amount from the possession of the accused officer. In peculiar circumstances, let an opportunity be given to the Prosecution to examine those witnesses and the said power must be invoked to meet the ends of justice.

14. The principles laid down by the Hon'ble Apex Court in *Natasha Singh's case (supra)* at Para No.16 is as follows:

“16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same.”

15. On a plain reading of the above said decision, according to Section 311 Cr.P.C., it is clear that any Court may, at any stage of any enquiry, trial or other proceedings under this Code should examine the witnesses, whose evidence appears to be essential to the just decision of the case. In that view of the matter, the request of the prosecution to examine those two witnesses appears to be quite reasonable. I, therefore, see the irregularity

committed by the trial Court in having refused to consider the request of the prosecution under Section 311 Cr.P.C to examine the material witnesses.

16. Section 311 Cr.P.C contains two limbs. The first limb is discretion of the Court and the second limb does not confer any discretion and it is obligatory for the Court to summon, or reopen and recall the witnesses if the Court finds that the evidence of proposed witnesses is necessary to decide the real controversy between the parties, effectively.

17. In the instant case, L.Ws.13 and 14, who are Trap Laying Officer and the accompanying witness respectively, are very crucial witnesses to the prosecution. If the trial Court denied the opportunity to examine such witnesses, it is against the principles of fair trial, since the fair trial is a fundamental right guaranteed under Article 21 of the Constitution of India.

18. The principles laid down by the Hon'ble Apex Court in **Rajaram Prasad Yadav Vs. State of Bihar and another**³ which are very much essential for exercising the powers under Section 311 Cr.P.C and are relevant to the present context.

“17.1.

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment

³ (2013) 14 SCC 461

should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

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17.14. The power under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

19. In the light of the above legal position, the trial Court ought to have allowed the petition to reopen and recall the evidence of L.Ws.13 and 14, who are Trap Laying Officer and the Accompanying Witness respectively, to enable the prosecution to adduce evidence and meet the requirement of fair trial. If the trial Court denied to lead the evidence of the above witnesses, definitely, it cannot be treated as a fair trial. Therefore, the Order of the trial Court cannot be sustained in the light of the legal positions referred to *supra*. Thus, in the opinion of this Court, the impugned Order is contrary to the scope and ambit of Section 311 Cr.P.C., and also the principles laid down by the Hon'ble Apex Court in the decisions referred to *supra*. Therefore, the impugned Order dated 04.06.2014 passed by the Special Judge for ACB Cases at Kurnool in Crl.M.P.No.158 of 2014 in C.C.No.46 of 2013, is liable to be quashed.

20. Further, the instant case is under the Prevention of Corruption Act. L.Ws.13 and 14 are very crucial witnesses for the discovery of relevant facts about the laying of trap and seizure of the bribe amount and material objects etc. On perusal of the record, the trial Court has not taken any coercive steps to secure the presence of those witnesses. In spite of the Circulars issued by the High Court not to close the official witnesses

unless and until coercive steps are taken by addressing letters to the Higher Authorities concerned, the evidence of those witnesses was closed. In a case of this nature, if the evidence of such witnesses is closed, entire exercise of the Investigation Agency would turn futile and also it leads to entertaining a doubt about the integrity of the trial Judge. If such instances arise in the case of this nature in future, the ACB or CBI as the case may be, has to take judicial remedial measures in accordance with law. It is desirable to issue appropriate Circular by the High Court to all the trial Judges, who are dealing with CBI/ACB cases, not to close the evidence of Trap Laying Officer or official witnesses hastily without exhausting all the measures in securing the presence of the witnesses for their evidence. In this regard, the Registrar General may take appropriate steps for the issuance of such circular.

21. Resultantly, the Criminal Petition is allowed with a direction to the learned Special Judge for ACB Cases at Kurnool to fix a specific date of appearance of L.Ws.13 and 14 and afford an opportunity to the Prosecution to examine the witnesses (L.Ws.13 and 14). However, the Prosecution is directed to pursue the matter diligently without seeking further time and to

produce the evidence of those witnesses before the trial Court, by following the procedure prescribed under the law.

Office is directed to place the copy of this Order before the Registrar General for necessary action as observed by this Court above.

Registry is directed to communicate a copy of this Order to the trial Court, within a week from this day.

As a sequel, the miscellaneous petitions, pending if any, shall stand disposed of.

JUSTICE DUPPALA VENKATA RAMANA

26.07.2023

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HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
CRIMINAL PETITION No.6755 OF 2014

26.07.2023

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IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

CRIMINAL PETITION No.6755 of 2014**Between:**

State ACB represented by the Inspector of Police,
Anti-Corruption Bureau, Tirupati Range
Through Standing Counsel-cum-Special Public Prosecutor
For ACB Cases, High Court of A.P., Amaravati.

... Petitioner/Complainant

And

M.Balakrishna Reddy,
Village Revenue Officer,
O/o.Tahsildar, Yerpedu,
Chittoor District.

... Respondent/Accused Officer

DATE OF JUDGMENT PRONOUNCED: **26-07-2023****SUBMITTED FOR APPROVAL:****THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes/No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes/No

DUPPALA VENKATA RAMANA, J

*** THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

+ CRIMINAL PETITION No. 6755 of 2014

% 26-07-2023

Between:

State ACB represented by the Inspector of Police,
Anti-Corruption Bureau, Tirupati Range
Through Standing Counsel-cum-Special Public Prosecutor
For ACB Cases, High Court of A.P., Amaravati.

... Petitioner/Complainant

And

M.Balakrishna Reddy,
Village Revenue Officer,
O/o.Tahsildar, Yerpedu,
Chittoor District.

... Respondent/Accused Officer

! Counsel for Petitioner : Sri S.M.Subhani, Special
Public Prosecutor for ACB

^ Counsel for Respondent : Sri C.Sharan Reddy

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> Head Note:

? Cases referred:

1. (2012) 7 SCC 56
2. (2013) 5 SCC 741
3. (2013) 14 SCC 461

This Court made the following: